

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

VERTO MEDICAL SOLUTIONS, LLC, et al.,)	
)	
Plaintiffs,)	
)	Case No.
v.)	
)	Removed from the 22nd Judicial
ALLIED WORLD SPECIALTY INSURANCE)	Circuit Court of the City of St. Louis,
COMPANY,)	Missouri, Case No. 1922-CC00829
)	
Defendant.)	JURY TRIAL DEMANDED
)	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Allied World Specialty Insurance Company (“Allied World”), by and through undersigned counsel, hereby removes this action from the 22nd Judicial Circuit Court of the City of St. Louis, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division, based on diversity jurisdiction under 28 U.S.C. §§ 1332, 1441(a) and 1446(b). In support of such removal, Allied World states as follows:

THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

1. On April 24, 2019, Plaintiffs Verto Medical Solutions, LLC (“Verto”) and Seth Burgett filed a Petition in the Circuit Court for the City of St. Louis, Missouri, which named Allied World as the defendant. Plaintiff’s action bears the case number 1922-CC00829 (the “State Court Action”).

2. Defendant Allied World was served by delivery of summonses upon the Missouri Department of Insurance on May 1, 2019. Pursuant to 28 U.S.C.

§ 1446(b)(2)(B), this Notice of Removal is timely filed within 30 days after service upon Allied World.

3. As required by 28 U.S.C. § 1446(a), a copy of all records and proceedings from the Circuit Court for the City of St. Louis, Missouri is attached hereto. The Petition is attached as Exhibit 1. The remainder of the state court file is attached hereto as Exhibit 2, comprising:

- Summons
- Return of summons

4. This Notice of Removal is properly directed to this Court pursuant to 28 U.S.C. § 1446(a), because this is the United States District Court embracing the Circuit Court for the City of St. Louis, Missouri, where the State Court Action is pending. See 28 U.S.C. § 105.

5. In accordance with 28 U.S.C. § 1446(d), Allied World has filed written notice of this removal with the Clerk of the Circuit Court for the City of St. Louis, Missouri, where the State Court Action is pending. A copy of this Notice of Removal and the written notice of the same also are being served, concurrently herewith, upon Plaintiffs.

COMPLETE DIVERSITY OF CITIZENSHIP EXISTS

6. At the time this action was filed and the time this Notice of Removal is filed, Allied World was and is an insurance company organized under the laws of the State of Delaware with its principal place of business located in New York, New York. Allied World is, therefore, a citizen of the states of Delaware and New York, pursuant to 28 U.S.C. § 1332(c)(1).

7. Upon information and belief, at the time this action was filed and at the time this Notice of Removal is filed, Plaintiff Seth Burgett was and is an individual and citizen of the State of Illinois. See Petition, Ex. 1, at ¶ 2.

8. Verto is a limited liability company. The citizenship of a limited liability company is determined by the citizenship of its members. *GMAC Commercial Credit LLC v. Dillard Dep't Stores, Inc.*, 357 F.3d 827, 829 (8th Cir. 2004). The principal place of business and state of organization of a limited liability company are irrelevant to determining its citizenship. *Lehmann v. Davidson Hotel Co., LLC*, No. 4:15-CV-319 CAS, 2015 U.S. Dist. LEXIS 23868, at *2 (E.D. Mo. Feb. 27, 2015).

9. Upon information and belief, at the time this action was filed and at the time this Notice of Removal is filed, no member of Verto is a citizen of New York or of Delaware, and thus there is complete diversity of citizenship between Allied World and the plaintiffs.

10. Verto is a company that developed earphones that it called “yurbuds.” See Petition, Ex. 1, at ¶ 9.

11. In 2014, Verto sold its assets and, as of 2016, “is now currently in the final stages of winding down its operations.” See Burgett Complaint, Case No. 4:16-cv-00622, attached hereto as Exhibit 3, at ¶ 2; Petition, Ex. 1, at ¶ 11.

12. Upon information and belief, there are few remaining members of Verto. The underlying lawsuit for which Plaintiffs seek insurance coverage from Allied World arises out of payouts to the members of Verto to terminate their membership in Verto. See *generally* Burgett Complaint, Ex. 3.

13. Verto prevailed at trial and obtained a judgment in its favor on the members' claims that they were entitled to more compensation than they had already received to terminate their interest in the limited liability company. Accordingly, Allied World believes that, at the time this action was filed and at the time this Notice of Removal is filed, the plaintiffs in the Iowa shareholder action referenced in the Petition are not members of Verto. However, Allied World accounts for the citizenship of these former members below.

14. Upon information and belief, at the time this action was filed and at the time this Notice of Removal is filed, the citizenship of the members of Verto was and is as follows:

- Seth Burgett was and is an individual and citizen of the State of Illinois;
- Jason Hellickson was and is an individual and citizen of the State of Iowa;
- Susan Hellickson was and is an individual and citizen of the State of Iowa;
- Douglas Vander Weide was and is an individual and citizen of the State of Iowa;
- Mike Dee was and is an individual and citizen of the State of Iowa;
- Kris Dee was and is an individual and citizen of the State of Iowa;
- Charles DePena was and is an individual and citizen of the State of Iowa;
- Steve Feltz was and is an individual and citizen of the State of Iowa;
- James Fogt was and is an individual and citizen of the State of Iowa;
- Marc Gillotti was and is an individual and citizen of the State of Colorado;
- Matt Hegelson was and is an individual and citizen of the State of South Dakota;

- Kari Hegelson was and is an individual and citizen of the State of South Dakota;
- Brad King was and is an individual and citizen of the State of Iowa;
- Jill King was and is an individual and citizen of the State of Iowa;
- Suresh Kota was and is an individual and citizen of the State of Texas;
- Bhagyalakshmi Arvapalli was and is an individual and citizen of the State of Texas;
- David Lacey was and is an individual and citizen of the State of Iowa;
- Sarah Lacey was and is an individual and citizen of the State of Iowa;
- Bryan Lamb was and is an individual and citizen of the State of Iowa;
- Theodore Lare was and is an individual and citizen of the State of Iowa;
- Krestin Levy was and is an individual and citizen of the State of Iowa;
- Jeff Lorenzen was and is an individual and citizen of the State of Iowa;
- Scott Lukan was and is an individual and citizen of the State of Iowa;
- Kara Lukan was and is an individual and citizen of the State of Iowa;
- Theresa A. McConeghey was and is an individual and citizen of the State of Iowa;
- Alan R. McConeghey was and is an individual and citizen of the State of Iowa;
- Brian Mehlhaus was and is an individual and citizen of the State of Iowa;
- Laura Mehlhaus was and is an individual and citizen of the State of Iowa;
- Mark Meyer was and is an individual and citizen of the State of Iowa;
- Ann Meyer was and is an individual and citizen of the State of Iowa;

- Nagendra Myneni was and is an individual and citizen of the State of Iowa;
- Timothy Neugent was and is an individual and citizen of the State of Iowa;
- Gerald Neugent was and is an individual and citizen of the State of Iowa;
- Kaaren Olesen was and is an individual and citizen of the State of Iowa;
- Michael Riggs was and is an individual and citizen of the State of Iowa;
- John Rizzi was and is an individual and citizen of the State of Iowa;
- Joanne Rizzi was and is an individual and citizen of the State of Iowa;
- Tim Stephany was and is an individual and citizen of the State of Iowa;
- Tonto Holdings, LLC was and is a limited liability company. Upon information and belief, the members of Tonto Holdings, LLC are individuals and citizens of the State of Iowa. Upon information and belief, no member of Tonto Holdings, LLC is a citizen of Delaware or New York;
- Scott Vance was and is an individual and citizen of the State of Iowa;
- Harv Vander Weide was and is an individual and citizen of the State of Iowa;
- Lois Vander Weide was and is an individual and citizen of the State of Iowa;
- Ravi Vemulapalli was and is an individual and citizen of the State of Iowa;
- Rani Makkapati was and is an individual and citizen of the State of Iowa;
- Buddemeyer Investments, LLC was a limited liability company. Upon information and belief, the existence of Buddemeyer Investments, LLC has terminated. Upon information and belief, prior to its termination, the members of Buddemeyer Investments, LLC were individuals and citizens

of the State of Florida. Upon information and belief, no member of Buddemeyer Investments, LLC was a citizen of Delaware or New York;

- Michael L. McKinney was and is an individual and citizen of the State of Missouri;
- Todd Milbourn was and is an individual and citizen of the State of Missouri;
- Elizabeth Milbourn was and is an individual and citizen of the State of Missouri;
- Magnolia Partners, LLC was and is a limited liability company. Upon information and belief, the members of Magnolia Partners, LLC are individuals and citizens of the State of Missouri. Upon information and belief, no member of Magnolia Partners, LLC is or was a citizen of Delaware or New York;
- Mark R. Slocomb, Trustee of the Mark R. Slocomb Trust, was and is an individual and citizen of the State of Illinois;
- Dennis Rose was and is an individual and citizen of the State of Missouri;
- Michael Malloy was and is an individual and citizen of the State of Missouri;
- Joan Malloy was and is an individual and citizen of the State of Missouri;
- Steve Meyer was and is an individual and citizen of the State of Illinois;
- Teresa Jenson was and is an individual and citizen of the State of Iowa;
- Ron King was and is an individual and citizen of the State of Missouri;

- Nick Kollison was and is an individual and citizen of the State of Washington;
- Luc De Temmerman was and is an individual and citizen of the country of Belgium;
- Ann-Marie Uyttersprot was and is an individual and citizen of the country of Belgium;
- Richard Daniels was and is an individual and citizen of the State of Missouri; and
- Craig Ceranna was and is an individual and citizen of the State of Missouri.

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000

15. Without admitting liability or conceding that the Plaintiffs are, in fact, entitled to recover any damages, Allied World states that Plaintiffs seek to recover on a \$2 million insurance policy. Plaintiffs allege that their claim for breach of contract and vexatious refusal entitles them to recover from Allied World an amount in excess of \$600,000 in expenses and fees that they incurred in the defense of an underlying lawsuit for which Allied World denied insurance coverage, as well as statutory penalties thereon and their attorneys' fees in this action, pursuant to Mo. Rev. Stat. §§ 375.296 and 375.420. The amount in controversy in this action therefore exceeds \$75,000, exclusive of interests and costs. See 28 U.S.C. § 1332(a).

16. Because there is complete diversity between plaintiffs and defendant and the amount in controversy exceeds the jurisdictional threshold of \$75,000, exclusive of interest and costs, diversity jurisdiction exists in this action.

REQUEST FOR JURISDICTIONAL DISCOVERY, HEARING

17. Allied World recognizes that Plaintiffs may contest this removal. If so, Allied World requests the right to conduct discovery limited to jurisdictional facts, including but not limited to the citizenship of the members of Verto.

18. Allied World further requests a hearing on the issue of this Court's jurisdiction and the opportunity to present evidence that demonstrates the existence of federal diversity jurisdiction.

WHEREFORE, Defendant Allied World Specialty Insurance Company respectfully requests that this Court assume jurisdiction over this action in accordance with 28 U.S.C. §§ 1332, 1441, and 1446. Should any issue arise as to the propriety of this removal, removing defendant respectfully requests the opportunity to conduct limited jurisdictional discovery and to provide briefing and oral argument on the same.

Respectfully submitted,

BAKER STERCHI COWDEN & RICE, LLC

/s/ Angela M. Higgins

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**ATTORNEYS FOR DEFENDANT
ALLIED WORLD SPECIALTY INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2019, a copy of the foregoing was served by U.S. Mail, postage prepaid, to the following counsel of record:

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ATTORNEY FOR PLAINTIFFS

/s/ Angela M. Higgins